

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed December 22, 2006. At the time of the Office Action, Claims 1-6 and 8-18 were pending in the Application. Applicant amends Claims 1 and 14 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejections

The Examiner rejects Claims 1-6 and 8-18 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,914,953 issued to Krause et al. (hereinafter "*Krause*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

Clearly, *Krause* cannot inhibit the patentability of Independent Claim 1 because *Krause* fails to teach a routing treatment comprising switching information that determines an output port for switching packets...the routing device generating an accounting record for the

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

first message and determining an encryption treatment for the first message, as is recited in Independent Claim 1.

As a preliminary matter, Applicant points out that preambles are certainly afforded patentable weight when Applicants have elected to breathe life into this language. Thus, by the nature of Applicant's arguments, which bring the preamble under Examiner scrutiny, the preamble is a limitation to be considered. Note that this issue is now moot, as Applicant has made amendments to further enlighten the Examiner in this regard, although Applicant was not obligated to do so.

Turning to the merits of the main reference, there is nothing in *Krause* that offers any teaching for, first, recording a first routing treatment that includes switching information that determines an output port for switching packets. Nor does *Krause* offer any disclosure of a routing device generating an accounting record for the first message and determining an encryption treatment for the first message. Applicant has actually reviewed *Krause* in its entirety and there is simply nothing in *Krause* that would inhibit the patentability of the present subject matter. The relevant passage cited by the Examiner (Column 31, lines 53-67) only discusses accessing specific internal portions of memory, not the limitations highlighted above. Applicant suggests the Examiner concede the misgivings of *Krause* and head back into the Examiner shoes and find a better reference that is more germane to the teachings of the pending claims.

For at least the reasons outlined above, Independent Claim 1 is clearly allowable over the cited reference. All of the other Independent Claims include a similar limitation and, thus, are also allowable over these references for analogous reasons. In addition, their respective dependent claims are allowable using a similar rationale. Notice to this effect is respectfully requested.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes that no fees are due. However, if this is not correct, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,

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